

Spinnaker

Blue Category

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Label: Permanent (Capstone approach) Expires: Never

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Hersh, Stuart

Thu 1/30/2020 11:45 AM

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To:

- Kolak, Shari;
- Kirby-Miles, Leslie;
- Kyte, Larry;
- Fischer, Timothy;
- Kirchner, Karen

Shari,

This am I talked with Tim Hoffman, Spinnaker's attorney. We discussed factual concerns to document the basis for a CERCLA 122(g)(1)(B) administrative settlement and we discussed a Consent Decree pathway. I explained that the 122(g)(1)(B) presents two issues:

1. the question of the statute's "any" knowledge relative to known toluene contamination identified during the 1994 Phase I Investigation, even though toluene is not a contaminant of concern in the ROD, and;
2. whether the 1994 Phase I Investigation remains the relevant basis for identifying whether site contamination exist at the facility for the purposes of establishing the basis for a 122(g)(1)(B) settlement in light of:
 - a. the corporate name and other corporate changes occurring in subsequent years (1997/8; 2002, 2006 and 2012), and whether site contaminant knowledge at any of those subsequent events would be the appropriate basis on which to establish the basis for a 122(g)(1)(B) settlement, and
 - b. the fact that Spinnaker had received knowledge of TCE contamination (a ROD contaminant) at Spinnaker's property, but not at EA-6, in 1995 and in other subsequent years, that may be relevant when corporate changes occurred in 1997/98; 2002, 2006 and 2012.

Tim will review the corporate changes and the contaminant reports to assist us in addressing these concerns and developing a CERCLA 122(g)(1)(B) memo.

I also breached the potential for Spinnaker conducting the EA-6 soil contamination removal without a settlement agreement and without a covenant or pursuant to a UAO without a covenant.

Tim stated that in light of the concerns that I raised, he would discuss the options with his client and circle back mid-next week.

We (you) should think about what documentation would be appropriate for Spinnaker to conduct this soil contamination removal work without an agreement - - health and safety, pre and post sampling, etc., and oversight of such work.

I will contact you next week once I hear back from Tim. If you would like to talk before then, please call me.

Stuart P Hersh
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